IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 388 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IDRIS SAIYED HUSSAIN SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR IH SYED FOR MP SHAH for Petitioner

MR MA BUKHARI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 27/09/2000

ORAL JUDGEMENT

1. Heard learned counsel for the revisionist and Shri MA Bukhari, learned APP for the State on admission of this revision.

2. Initially, the matter was filed as Special

Criminal Application No.824/2000. It is not known under what circumstances it was converted into Criminal Revision. The impugned order of the Additional Sessions Judge, Kheda at Nadiad can very well be quashed in a Writ Petition under Article 226 of the Constitution of India. However, since initially a Writ Petition was filed which has been converted into a Criminal Revision, there is no good purpose in redirecting the applicant to convert it into a Special Criminal Application.

3. Having heard learned counsel for the revisionist and Shri MA Bukhari, learned APP, it is found just and expedient to dispose of this revision finally at the admission stage because of urgency in the matter in as much as 7 days police remand has been granted by the Additional Sessions Judge, Kheda at Nadiad through the impugned order.

4. The brief facts are that FIR was lodged against five persons including the revisionist who was accused no.5. Allegation of conspiracy with the main accused was made against the revisionist. It was a case of demand of ransom of Rs.25 lacs and consequent threat to the complainant that he and his family members would be shot dead in case the ransom is not paid. The revisionist was arrested on August 31, 2000 and, on that very date an application was submitted by the Police Inspector claiming 14 days police remand of the revisionist. The said request was rejected by the Judicial Magistrate, Anand through his order dated August 31, 2000.

5. Feeling aggrieved, revision was filed before the Additional Sessions Judge, Kheda at Nadiad.

6. The Additional Sessions Judge reversed the order of the Judicial Magistrate and granted 7 days police remand of the revisionist. Hence, this revision.

7. Shri MA Bukhari, learned APP for the respondent has contended that the impugned order of the Additional Sessions Judge is perfectly justified in order to enable the Investigating Agency to reach the real culprit and also to collect material evidence by putting the revisionist to a long interrogation and, as such no interference in the impugned order is required.

8. As against this, the learned counsel for the revisionist has contended that the revisional Court has travelled beyond its authority and has illegally set-aside the order of the Judicial Magistrate. I have considered the detailed order of the Additional Sessions

Judge, Kheda at Nadiad and also the request of the Investigating Officer seeking 14 days police remand of the revisionist. As many as 13 grounds are taken in the application for police remand. All these grounds were turned down by the Judicial Magistrate, Anand impliedly because the order of the learned Magistrate is a short order and these grounds have not been specifically dealt with. However, in the detailed order, the Additional Sessions Judge has confined himself only on two points viz. (1) if the police remand is given the Investigating Agency may be able to arrest the main accused Mohammad Imtiyaz @ Latif and; (2) if the police remand of the revisionist is granted, the Investigating Agency may be able to recover the fire arm namely, the revolver. It was also mentioned in the impugned order that, since the revisionist is a co-conspirator, material information regarding criminal conspiracy may be gathered if the revisionist is put to a long interrogation during police remand. Other grounds contained in the remand application of the Investigating Officer were not touched by the Additional Sessions Judge, which implies that he was not at all satisfied with the remaining grounds that the revisionist should be granted 14 days remand. It further appears that the Additional Sessions Judge has granted only 7 days remand as against 14 days claimed by the Investigating Officer.

9. There were five accused in all. Three accused namely accused nos.2,3 and 4 were arrested earlier. Similar request for police remand was made and those three arrested accused were granted 11 days police remand. The learned Judicial Magistrate, Anand found that during this period no case property was recovered from those three accused, and no fruitful information could be gathered from them. As such, he found that no useful purpose will be served by granting police remand against the revisionist. The Additional Sessions Judge has, however, considered three points for judging, whether the order of the Judicial Magistrate, Anand is legal or not ? The first point considered by the Additional Sessions Judge is that, the rejection of remand application by the Judicial Magistrate was on account of the fact that the Investigating Agency could not reach the main culprit because, three accused were granted 11 days police remand. According to the Additional Sessions Judge, this fact was totally immaterial because it was to be considered whether police remand of the revisionist was necessary or not ?

10. This reasoning of the Additional Sessions Judge does not appear to be convincing. Transfer of an accused

from judicial custody to police custody is a serious matter and, unless the court is satisfied that by transfer of such custody the Investigating Agency may be able to collect some definite material or evidence or may be able to recover the weapon used in commission of the offence, police remand should not lightly be granted. So far as the recovery of fire arm is concerned, even from the FIR it appears that no fire arm was used by any of the five accused. On the other hand, through telephonic message some threat was given in the false name of Karim that, the complainant and his family members could be shot dead. The name of the real person was Imtiyaz Ramzankhan. Moreover, it does not appear that the revisionist extended threat on telephone that the complainant and his family members could be shot dead by fire arm. The nature of fire arm is not disclosed in the FIR. Consequently, interrogation of the revisionist is nothing but wishful thinking of the Investigating Officer and, for this purpose remand of the revisionist does not seem to be just and expedient. Even, considering the prima facie allegation against the revisionist he can be said, at this stage, to be a co-conspirator. The Additional Sessions Judge has not considered the request of the Investigating Agency that the revisionist will be able to point out the vehicle which was used in the commission of the said offence. That is also not a material consideration because, actual abduction for ransom has not been done.

11. The second point for consideration by the Additional Sessions Judge was that, "recovery of fire arm may or may not be made, but since it is mentioned and it is spoken in the FIR, it may or may not be recovered. As such, at this stage of investigation it could hardly be justified to say that no weapon is recoverable from the accused viz. the revisionist in this revision." I have already discussed this aspect earlier. Since fire arm was not used and only pseudonymous telephonic call is given not directly to the complainant but to the police officer, this consideration is also irrelevant.

12. Police remand of the revisionist in order to enable the Investigating Agency to arrest the main culprit or the main accused namely Mohammad @ Imtiyaz Latif is hardly permissible. If the Investigating Agency could not know the whereabouts of the main accused even, from one of the main accused who was arrested earlier and given 11 days police remand and who happened to be the nephew of the main accused, it seems difficult that the Investigating Officer will get definite information from the revisionist during police remand. There were other

two accused also who were arrested and were given 11 days remand but, from them also the whereabouts of the main culprit could not be found. It is not the allegation of the Investigating Agency that the revisionist is concealing the main accused or he knows his whereabouts.

13. In view of the above discussion, I am of the view that the learned Additional Sessions Judge, Kheda at Nadiad on imaginary grounds granted police remand. So far as the recovery of the mobile phones is concerned, three mobile phones have already been recovered and, as such, for this purpose also, police remand is not necessary.

14. A peculiar reasoning has been given by the Additional Sessions Judge that the complainant does not appear to have any reason to lodge a false complaint. This finding was hardly required to be given at the stage of considering the request of the Investigating Agency for police remand. Practically, it amounts to prejudging the case before trial viz. whatever is written in the complaint or in the FIR, it should be correct and not false. Such observation should have been avoided by the Additional Sessions Judge.

15. Another reasoning given by the Additional Sessions Judge is that the reasonable probability cannot be and should not be ruled out. May be the Investigating Agency which is under duty to probe all avenues with a view to reach the truth, it may reach or may not reach to the real culprit. This point has already been considered by me in the foregoing portion of this judgment. Police remand cannot be granted to enable the Investigating Agency to reach and arrest the main accused in this manner. It is the duty of the Investigating Agency to lays its hand over the real culprit in any other way and not by seeking police remand of the co-accused revisionist - more particularly, when such attempt failed on previous occasion.

16. For the reasons given above, I find that the impugned order is wholly unreasonable, illegal and unjust. The revision therefore succeeds and it is allowed. The impugned order is set-aside. Direct service is permitted.

September 27, 2000. (D.C. Srivastava, J.)
/sakkaf